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LATE

SENATE COMMITTEE ON WAYS AND MEANS
February 25th, 2008, 10:30 A.M.

(Testimony is 2 pages long)

TESTIMONY IN STRONG SUPPORT OF SB 1368 SD1

Chair Baker and members of the Committee:

The Sierra Club, Hawai`i Chapter, with over 5500 dues paying members statewide, strongly supports SB 1368 SD1, establishing a "use-it-or-lose-it" policy for land use reclassifications. This measure would vastly improve "smart growth" policies on our islands, help ensure proper allocation of finite infrastructure resource dollars, and help prevent land speculation by discouraging large landowners from simply seeking to reclassify their land to sell it at a higher value.

Too often, large developments that require the reclassification of agricultural land to urban are approved by the state land use commission (LUC) but then shelved for many years, if not decades, for various reasons. Waiawa on O`ahu is a prime example, where planning was completed in the 1980s but no homes have been built decades later.

When reclassifications are made but the land goes unused, planning becomes difficult, as decisions regarding future growth and infrastructure needs for an area become uncertain. Some developments were planned under conditions different from today, and the conditions applied by the LUC may no longer make sense.

SB 1368 SD1 supports the original intent of Hawaii's venerable Land Use Law. The law was passed in 1961 to protect natural beauty and natural resources, to prevent scattered and premature development, and to limit land speculation of urban areas. (1961 House Journal 855; 1961 Sess. Laws 299; See also, HRS § 226-104.) As the Hawai`i Supreme Court noted:

> *In sum, the overarching purpose of the state land use law is to "protect and conserve" natural resources and foster "intelligent," "effective," and "orderly" land allocation and development. See 1961 Haw. Sess. L. Act 187 § 1 at 299 ("[I]n order to preserve, protect and encourage the development of lands in the State for those uses to which they are best suited for the public welfare . . . , the power to zone should be exercised by the State.") See also Pearl Ridge Estates Community Ass'n v. Lear Siegler, Inc., 65 Haw. 133, 144 n.9, 648 P.2d 702, 709 n.9 (Nakamura, J., concurring)("Thus, conservation lands must be reserved if practicable, agricultural lands should be protected, and urban lands should be developed in orderly fashion.")*
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> Curtis v. Board of Appeals, County of Hawai`i, 90 Haw. 384, 396 (1999), 978 P. 2d 822, 834.

The Hawai`i Supreme Court has long observed that the emphasis of the Land Use Law is on controlling growth and protecting resources:

> *By enacting HRS ch. 205 in 1961, the legislature intended, inter alia, to "[s]tage the allocation of land for development in an orderly plan," H.Stand.Comm.Rep. No. 395, 1st Haw.Leg., 2d Sess., reprinted House Journal 855-56, and to redress the problem of "inadequate controls [which] have caused many of Hawaii's limited and valuable lands to be used for purposes that may have a short-term gain to a few but result in long-term loss to the income and growth potential of our economy. Act 187, 1961 Haw.Sess. Laws 299.*
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> Neighborhood Board v. State Land Use Commission, 64 Haw. 265, 272-3, 639 P.2d 1097 (1982).

Hawaii's Land Use Law was enacted in an effort to manage growth on islands of limited resources:

> *Scattered subdivisions with expensive, yet reduced public services; the shifting of prime agricultural lands into non-revenue producing residential uses when other lands are available that could serve adequately urban needs . . . these are evidences of the need for public concern and action.*
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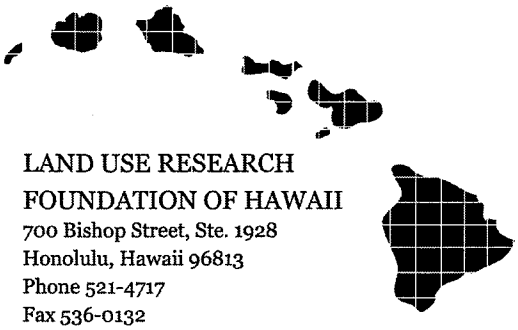
> Act 187, 1961 Haw Sess. Laws 299.

Today, tens of thousands of units have been approved for development but not yet built. In the meantime, tens of thousands of new units are proposed and seeking (or will be seeking) reclassification from the LUC. Without a "use-it-or-lose-it" provision as contemplated in SB 1368 SD1, a patchwork of development may occur throughout our islands, diluting our limited public infrastructure dollars, decreasing open space, and increasing speculation on agricultural lands.

Thank you for the opportunity to testify.



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LATE

February 5, 2007

BY E-MAIL

The Honorable Rosalyn H. Baker, Chair and Members
Senate Committee on Ways and Means
Hawaii State Capitol, Room 211
Honolulu, HI 96813

RE: Testimony in Opposition to Senate Bill No. 1368, SD1 Relating to Land Use (Use it or Lose it)

Dear Chair Baker and Members:

My name is David Arakawa; I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable and rational land use planning, legislation and regulations affecting common problems in Hawaii.

LURF is providing our testimony **in strong opposition to S.B. 1368, SD1.**

S.B. 1368, SD1. The bill proposes to amend Chapter 205 HRS by establishing a process for determining when land use classifications should be rescinded because they have not been exercised.

LURF's Position. We understand the concern regarding the timing of when projects that are approved are actually developed. The timing of the construction of a project often involves other improvements that may benefit, and support adjacent properties. However, the proposed bill, which will establish specific time limits that will rescind approvals, does not fully recognize the roles and responsibilities that government plays in creating delays for develo9pment and the difficulties of real estate development.

- **This bill is duplicative, as the State Land Use Commission ("SLUC") already has a process to impose deadlines and an "order to show cause" process to review the satisfaction of conditions and requirements.** The SLUC already has a process and procedures to review compliance with SLUC conditions; said process includes establishing conditions with deadlines for substantial progress of approved developments.

- **Rather than reviewing the details of projects and enforcing deadlines which do not involve state functions, the SLUC should focus on**

broader public policy and use issues and leave such detailed review and enforcement to the Counties. The SLUC was originally established to consider reclassification of lands among the four state land use districts (Urban, Rural, Agricultural and Conservation). Given the SLUC's land use powers, it would make more sense for it to review the broader issues relating to the location of various land use activities, including housing, conservation, agricultural and rural areas. The Counties are each responsible for their own general plans, community plans, zoning and subdivision approvals, and would be better equipped to perform detailed reviews of projects and their impacts on communities.

- **Many times development is delayed due to the government's inability to provide the necessary infrastructure for the project. This bill should be amended to require the government agencies to provide infrastructure on a timely basis.** Government agencies responsible for providing infrastructure provide review and comment on land use and development proposals. After input from the various government agencies, the State and County plans and approvals direct land use and development in certain areas, and it is expected that the various government agencies will plan for, budget and provide the necessary infrastructure for such development areas. History has shown that sometimes developments are delayed due to the government's inability to provide the necessary infrastructure on a timely basis.

- **Economic factors beyond the control of the developer oftentimes influence the timing of the project.** Factors such as: supply, demand, market conditions, financing, etc., all play a role in determining the timing of a particular project. The same economic factors affect the economy and projects at the State and County level and result in substantial delays in the implementation of government projects or programs.

Conclusion. This bill is redundant, because a process already exists for the SLUC to review conditions regarding the timing of developments. Moreover, the SLUC should concern itself with broader land use public policy issues and leave the specific requirements and the monitoring of the timing of developments to the counties. Most importantly, rescinding approvals without recognition of these other factors beyond the control of the applicant does not appear to be reasonable or fair. For these reasons, LURF cannot support the bill as drafted, and we recommend that this bill not be approved.

Thank you for this opportunity to express our views.

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